

struction and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes;

S. 1762. An Act to authorize appropriations for fiscal year 1997 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes;

S. 1763. An Act to authorize appropriations for fiscal year 1997 for defense activities of the Department of Energy, and for other purposes; and

S. 1764. An Act to authorize appropriations for fiscal year 1997 for military construction and for other purposes.

§87.8 INSTITUTION OF MARRIAGE

The SPEAKER pro tempore, Mr. TAYLOR of North Carolina, pursuant to House Resolution 474 and rule XXIII, declared the House resolved into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H.R. 3396) to define and protect the institution of marriage.

Mr. GILLMOR, Chairman of the Committee of the Whole, resumed the chair; and after some time spent therein,

§87.9 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. FRANK:

Page 3, after line 20, insert:

(b) APPLICATION.—

(1) Subsection (a) shall not apply if the State in which the persons affected by such application of subsection (a) has determined that the definition of "marriage" or "spouse", or both, shall be different than that in subsection (a), provided such State determination is in the form of—

(A) legislation; or

(B) citizen initiative or referendum.

(2) In the case where such a determination is made by judicial decision interpreting a State constitution, subsection (a) shall cease to apply if the minimum time necessary in that State for an amendment to the State constitution elapses and the State's determination remains in effect.

(3) In the case where such a determination is made by judicial decision interpreting a State statute, subsection (a) shall cease to apply with the adjournment of the next session of the State legislature.

Page 3, line 21, strike "(b)" and insert "(c)".

It was decided in the { Yeas 103
negative } Nays 311

§87.10 [Roll No. 314] AYES—103

Abercrombie	DeFazio	Hinchey
Ackerman	Dellums	Horn
Barrett (WI)	Dingell	Jackson (IL)
Becerra	Dixon	Jackson-Lee
Beilenson	Engel	(TX)
Berman	Eshoo	Jefferson
Blumenauer	Farr	Johnson, E. B.
Bonior	Fattah	Kennedy (MA)
Brown (CA)	Fazio	Kennedy (RI)
Brown (FL)	Filner	Kennelly
Brown (OH)	Frank (MA)	Lantos
Campbell	Furse	Lewis (GA)
Clay	Gejdenson	Lofgren
Clayton	Gephardt	Lowey
Clyburn	Gonzalez	Maloney
Coleman	Gunderson	Markey
Collins (IL)	Gutierrez	Martinez
Collins (MI)	Harman	Matsui
Conyers	Hastings (FL)	McCarthy
Coyne	Hilliard	McDermott

McKinney	Pelosi	Skaggs
Meehan	Rangel	Slaughter
Meek	Reed	Stark
Millender-McDonald	Richardson	Stokes
Miller (CA)	Rivers	Studds
Mink	Rose	Torres
Moakley	Roybal-Allard	Torricelli
Moran	Rush	Towns
Nadler	Sabo	Velazquez
Neal	Sanders	Vento
Olver	Sawyer	Ward
Owens	Schroeder	Waters
Pallone	Schumer	Waxman
Payne (NJ)	Scott	Woolsey
	Serrano	Yates

NOES—311

Allard	Dornan	Knollenberg
Andrews	Doyle	Kolbe
Archer	Dreier	LaHood
Armey	Duncan	Largent
Bachus	Durbin	Latham
Baessler	Edwards	LaTourette
Baker (CA)	Ehlers	Laughlin
Baker (LA)	Ehrlich	Lazio
Baldacci	English	Leach
Ballenger	Evans	Levin
Barcia	Everett	Lewis (CA)
Barr	Ewing	Lewis (KY)
Barrett (NE)	Fawell	Lightfoot
Bartlett	Fields (TX)	Linder
Barton	Flake	Lipinski
Bass	Foglietta	Livingston
Bateman	Foley	LoBiondo
Bentsen	Forbes	Lucas
Bereuter	Fowler	Luther
Bevill	Fox	Manton
Bilbray	Franks (CT)	Manzullo
Bilirakis	Franks (NJ)	Martini
Bishop	Frelinghuysen	Mascara
Bliley	Frisa	McCollum
Blute	Frost	McCrery
Boehlert	Funderburk	McHale
Boehner	Gallegly	McHugh
Bonilla	Ganske	McInnis
Bono	Gekas	McIntosh
Borski	Geren	McKeon
Boucher	Gilchrest	McNulty
Brewster	Gillmor	Menendez
Browder	Gilman	Metcalf
Brownback	Goodlatte	Meyers
Bryant (TN)	Goodling	Mica
Bryant (TX)	Gordon	Miller (FL)
Bunn	Goss	Minge
Bunning	Graham	Molinari
Burr	Green (TX)	Mollohan
Burton	Greene (UT)	Montgomery
Buyer	Greenwood	Moorhead
Callahan	Gutknecht	Murtha
Calvert	Hall (TX)	Myers
Camp	Hamilton	Myrick
Canady	Hancock	Nethercutt
Cardin	Hansen	Neumann
Castle	Hastert	Ney
Chabot	Hastings (WA)	Norwood
Chambliss	Hayes	Nussle
Chapman	Hayworth	Oberstar
Chenoweth	Hefley	Obey
Christensen	Hefner	Ortiz
Chrysler	Heineman	Orton
Clement	Herger	Oxley
Clinger	Hilleary	Packard
Coble	Hobson	Parker
Coburn	Hoekstra	Pastor
Collins (GA)	Hoke	Paxon
Combest	Holden	Payne (VA)
Condit	Hostettler	Peterson (FL)
Cooley	Houghton	Peterson (MN)
Costello	Hoyer	Petri
Cox	Hunter	Pickett
Cramer	Hutchinson	Pombo
Crane	Hyde	Pomeroy
Crapo	Inglis	Porter
Creameans	Istook	Portman
Cubin	Jacobs	Poshard
Cummings	Johnson (CT)	Pryce
Cunningham	Johnson (SD)	Quillen
Danner	Johnson, Sam	Quinn
Davis	Jones	Radanovich
de la Garza	Kanjorski	Rahall
Deal	Kaptur	Ramstad
DeLauro	Kasich	Regula
DeLay	Kelly	Riggs
Deutsch	Kildee	Roemer
Diaz-Balart	Kim	Rogers
Dickey	King	Rohrabacher
Dicks	Kingston	Ros-Lehtinen
Doggett	Klecza	Roth
Dooley	Klink	Roukema
Doolittle	Klug	Royce

Salmon	Spence	Visclosky
Sanford	Spratt	Volkmer
Saxton	Stearns	Vucanovich
Scarborough	Stenholm	Walker
Schaefer	Stockman	Walsh
Schiff	Stump	Wamp
Seastrand	Stupak	Watts (OK)
Sensenbrenner	Talent	Weldon (FL)
Shadegg	Tanner	Weldon (PA)
Shaw	Tate	Weller
Shays	Tauzin	White
Shuster	Taylor (MS)	Whitfield
Sisisky	Taylor (NC)	Wicker
Skeen	Tejeda	Williams
Skeltton	Thomas	Wise
Smith (MI)	Thornberry	Wolf
Smith (NJ)	Thurman	Wynn
Smith (TX)	Tiahrt	Young (AK)
Smith (WA)	Torkildsen	Zeliff
Solomon	Trafficant	Zimmer
Souder	Upton	

NOT VOTING—19

Dunn	Johnston	Thompson
Ensign	LaFalce	Thornton
Fields (LA)	Lincoln	Watt (NC)
Flanagan	Longley	Wilson
Ford	McDade	Young (FL)
Gibbons	Morella	
Hall (OH)	Roberts	

So the amendment was not agreed to. The SPEAKER pro tempore, Ms. GREENE, assumed the Chair.

When Mr. GILLMOR, Chairman, pursuant to House Resolution 474, reported the bill back to the House.

The previous question having been ordered by said resolution.

The bill, as amended, was ordered to be engrossed and read a third time, was read a third time by title.

Ms. JACKSON-LEE moved to recommend the bill to the Committee on the Judiciary with instructions to report the bill back to the House forthwith with the following amendment:

Page 3, line 24, at the end of the bill, add the following new sections to the legislation:

SEC. 4. SHORT TITLE.

This Act may be cited as the "Employment Non-Discrimination Act of 1996".

SEC. 5. DISCRIMINATION PROHIBITED.

A covered entity, in connection with employment or employment opportunities, shall not—

(1) subject an individual to different standards or treatment on the basis of sexual orientation,

(2) discriminate against an individual based on the sexual orientation of persons with whom such individual is believed to associate or to have associated, or

(3) otherwise discriminate against an individual on the basis of sexual orientation.

SEC. 6. BENEFITS.

This Act does not apply to the provision of employee benefits to an individual for the benefit of his or her partner.

SEC. 7. NO DISPARATE IMPACT.

The fact that an employment practice has a disparate impact, as the term "disparate impact" is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(k)), on the basis of sexual orientation does not establish a prima facie violation of this Act.

SEC. 8. QUOTAS AND PREFERENTIAL TREATMENT PROHIBITED.

(A) QUOTAS.—A covered entity shall not adopt or implement a quota on the basis of sexual orientation.

(b) PREFERENTIAL TREATMENT.—A covered entity shall not give preferential treatment to an individual on the basis of sexual orientation.

SEC. 9. RELIGIOUS EXEMPTION.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall not apply to religious organizations.

(b) **FOR-PROFIT ACTIVITIES.**—This Act shall apply with respect to employment and employment opportunities that relate to any employment position that pertains solely to a religious organization's for-profit activities subject to taxation under section 511(a) of the Internal Revenue Code of 1986.

SEC. 10. NONAPPLICATION TO MEMBERS OF THE ARMED FORCES; VETERANS' PREFERENCES.

(a) **ARMED FORCES.**—(1) For purposes of this Act, the term "employment or employment opportunities" does not apply to the relationship between the United States and members of the Armed Forces.

(2) As used in paragraph (1), the term "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) **VETERANS' PREFERENCES.**—This Act does not repeal or modify any Federal, State, territorial, or local law creating special rights or preferences for veterans.

SEC. 11. ENFORCEMENT.

(a) **ENFORCEMENT POWERS.**—With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act—

(1) the Commission shall have the same powers as the Commission has to administer and enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), or

(B) sections 302, 303, and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. 1202, 1203, 1204), in the case of a claim alleged by such individual for a violation of such title or of section 302(a)(1) of such Act, respectively,

(2) the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title,

(3) the Board (as defined in section 101 of the Congressional Accountability Act of 1995 (Public Law 104-1; 109 Stat. 3) shall have the same powers as the Board has to administer and enforce the Congressional Accountability Act of 1995 in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act,

(4) the Attorney General of the United States shall have the same powers as the Attorney General has to administer and enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), or

(B) sections 302, 303, and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. 1202, 1203, 1204),

in the case of a claim alleged by such individual for a violation of such title or of section 302(a)(1) of such Act, respectively, and

(5) the courts of the United States shall have the same jurisdiction and powers as such courts have to enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title,

(B) sections 302, 303, and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. 1202, 1203, 1204) in the case of a claim alleged by such individual for a violation of section 302(a)(1) of such Act, and

(C) the Congressional Accountability Act of 1995 (Public Law 104-1; 109 Stat. 3) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act.

(b) **PROCEDURES AND REMEDIES.**—The procedures and remedies applicable to a claim alleged by an individual for a violation of this Act are—

(1) the procedures and remedies applicable for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title,

(2) the procedures and remedies applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) in the case of a claim alleged by such individual for a violation of such section, and

(3) the procedures and remedies applicable for a violation of section 201(a)(1) of Congressional Accountability Act of 1995 (Public Law 104-1; 109 Stat. 3) in the case of a claim alleged by such individual for a violation of such section.

(c) **OTHER APPLICABLE PROVISIONS.**—With respect to claims alleged by covered employees (as defined in section 101 of the Congressional Accountability Act of 1995 (Public Law 104-1; 109 Stat. 3)) for violations of this Act, title III of the Congressional Accountability Act of 1995 shall apply in the same manner as such title applies with respect to a claims alleged by such covered employees for violations of section 201(a)(1) of such Act.

SEC. 12. STATE AND FEDERAL IMMUNITY.

(a) **STATE IMMUNITY.**—A State shall not be immune under the eleventh article of amendment to the Constitution of the United States from an action in a Federal court of competent jurisdiction for a violation of this Act. In an action against a State for a violation of this Act, remedies (including remedies at law and in equity) are available for the violation to the same extent as such remedies are available in an action against any public or private entity other than a State.

(b) **LIABILITY OF THE UNITED STATES.**—The United States shall be liable for all remedies (excluding punitive damages) under this Act to the same extent as a private person and shall be liable to the same extent as a non-public party for interest to compensate for delay in payment.

SEC. 13. ATTORNEYS' FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or the Commission, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including expert fees and other litigation expenses, and costs. The United States shall be liable for the foregoing the same as a private person.

SEC. 14. RETALIATION AND COERCION PROHIBITED.

(a) **RETALIATION.**—A covered entity shall not discriminate against an individual because such individual opposed any act or practice prohibited by this Act or because such individual made a charge, assisted, testified, or participated in any manner in an investigation, proceeding, or hearing under this act.

(b) **COERCION.**—A person shall not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised, enjoyed, assisted, or encouraged the exercise or enjoyment of, any right granted or protected by this Act.

SEC. 15. POSTING NOTICES.

A covered entity shall post notices for employees, applicants for employment, and members describing the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e—10).

SEC. 16. REGULATIONS.

The Commission shall have authority to issue regulations to carry out this Act.

SEC. 17. RELATIONSHIP TO OTHER LAWS.

This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or any law of a State or political subdivision of a State.

SEC. 18. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 19. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of the enactment of this Act and shall not apply to conduct occurring before such effective date.

SEC. 20. DEFINITIONS.

As used in this Act:

(1) The term "Commission" means the Equal Employment Opportunity Commission.

(2) The term "covered entity" means an employer, employment agency, labor organization, joint labor management committee, an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)) applies, an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies, or an employing authority to which section 201(a) of the Congressional Accountability Act of 1995 (Public Law 104-1; 109 Stat. 3) applies.

(3) The term "employer" has the meaning given such term in section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b)).

(4) The term "employment agency" has the meaning given such term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(5) The term "employment or employment opportunities" includes job application procedures, hiring, advancement, discharge, compensation, job training, or any other term, condition, or privilege of employment.

(6) The term "labor organization" has the meaning given such term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

(7) The term "person" has the meaning given such term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(8) The term "religious organization" means—

(A) a religious corporation, association, or society, or

(B) a college, school, university, or other educational institution, not otherwise a religious organization, if—

(i) it is in whole or substantial part controlled, managed, owned, or supported by a religious corporation, association, or society, or

(ii) its curriculum is directed toward the propagation of a particular religion.

(9) The term "sexual orientation" means homosexuality, bisexuality, or heterosexuality, whether such orientation is real or perceived.

(10) The term "State" has the meaning given such term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(ii)).

Pending consideration of said motion,

§87.11 POINT OF ORDER

Mr. CANADY made a point of order against the motion to recommit with instructions, and said:

"The motion to recommit is not germane to the bill. The bill relates solely to the subject of marriage. The motion to recommit seeks to add language which relates to employment discrimination to a bill dealing with marriage. Clearly, this is a proposition on a subject different from that under consideration, in violation of clause 7 of rule XVI, and I ask the chair to rule the motion to recommit out of order."

Ms. JACKSON-LEE was recognized to speak to the point of order and said: